The Montana Small Business Development Center presents:

PROTECTING YOUR BUSINESS FROM LEGAL LIABILITY DURING REOPENING
SMALL BUSINESS WEBINAR SERIES 2020

Protecting Your Business From Legal Liability During Reopening
Montana. Social distancing since 1889. Helped along with some local news stations.
Protecting Your Business From Legal Liability During Reopening

- Legal Liability
- Mitigating your risk
- Potentially impacted areas
- Resources
What is legal liability?

The state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility.

Black’s Law Dictionary
This term “reasonable person” refers to an ordinary person who exercises care while avoiding the extremes of boldness and carefulness.

Black’s Law Dictionary
The “reasonable person” standard is ultimately decided by your judge or jury.

Mother’s Day diners in Castle Rock, CO after opening against state orders.

Waffle House in Savannah, GA during the first phase of the state’s reopening.
May 10, 2020

Bulletin from Montana Secretary of State Corey Stapleton

https://content.govdelivery.com/accounts/MTSOS/bulletins/28ac49f

Montana Business Forecast
By Corey Stapleton

I was more sad than disappointed, when April 15th came and went and our Business Services division reported 11,000 fewer businesses had renewed their registrations in Montana compared to last year.

The economic, social, and health-related disruptions from the coronavirus are historic. And Montana business owners, like everyone else, have to make difficult choices. Still, it hurts to watch.

United States unemployment is now 14.7 percent. The job losses from last


General Business Reopening Guidelines

PHASE ONE: ALL SETTINGS

- Health assessments must be conducted for all employees at the beginning of each shift.
- In establishments where customers wait in a line, non-household customers should remain physically distanced.
- Waiting areas where adequate physical distancing cannot be maintained should be closed.
  - Customers should be encouraged to call for a reservation or an appointment, or establishments should use an online wait listing application.
- Physical distancing of 6 feet must be maintained between non-congregate customers, this may require:
  - A reduction in capacity,
  - A reduction of seating in service and waiting areas;
  - Management of waiting areas and waiting lines; or
  - Systems that reduce the amount of contact time between customers and staff.

Outdoor Recreation Guidelines

PHASE ONE: TWO RESTRICTION GUIDELINES

- Parks, trails, river access sites, and camps are open for public use to provide outdoor recreative opportunities for local and regional residents where these uses do not interfere with current business guidelines and follow updated guidelines on access.

PHASE THREE: RESTRICTION GUIDELINES

- Campgrounds, group use facilities, playgrounds and state-owned state parks and trails are open.

Personal Care / Services Guidelines

PHASE ONE: PERSONAL CARE / SERVICES GUIDELINES

- Personal care and service establishments have an expanded period for reopening staff and customers to greater levels of business.
- Limit customer access to appointments only: customers are limited to scheduled appointments with a service provider.
- Wear protective gear, such as masks, face coverings, and gloves.
- Sanitize and sanitize surfaces regularly and frequently.
- Maintain physical distancing between customers, one may require:
  - Reduced service capacity,
  - Enhancing cleaning, sanitizing, disinfecting, or reducing services as needed.
  - Maintaining a physical barrier between stations;
  - A waiting area that limits the amount of contact time between customers and staff.

https://covid19.mt.gov/
Mitigating the risk

Read and review Governor Bullock’s Orders

- Does your business require PPE (Personal Protection Equipment)?
- Enact sanitations procedures
- Enact social distancing policies, including any signage
- Close communal areas, like breakrooms and smaller conference rooms
- Educate your staff
- Check back in regularly for updates
Mitigating the risk...continued

Contact your county and city departments

- Some guidance has been deferred to counties and local municipalities.

- Local law enforcement will be charged with enforcement, which might not be uniform around the State of Montana.

- Some websites are easier to navigate than others, but do not hesitate to reach out to your local authority.

- Each county will supplement directives for adhering to the reopening guidelines or defer to federal authorities (such as the CDC for cleaning and disinfection).
Your employees and customers

- PPE?
- Social distancing
  - Signage, markings or physical barriers?
- Employee symptom screening
- Customer travel or symptom screening
- Sanitation and disinfection policies

BEWARE: Discrimination and retaliation laws survives all things COVID.
White House and Congress clash over liability protections for businesses as firms cautiously weigh virus reopening plans

McConnell says liability protections for businesses are a requirement; Pelosi and Democrats say no. And there’s no sign of compromise.

By Erica Werner and Tom Hamburger

May 3, 2020 at 7:04 a.m. MDT

Walmart hit with wrongful death lawsuit after employee dies of COVID-19 complications

Wando Evans was 51 when he died of COVID-19 complications on March 25.

By James Hill and Catherine Thorbecke

April 8, 2020, 1:26 PM • 6 min read

Bullock adds gyms, movie theaters, museums to Montana's phased reopening plans

Tribune Staff

Published 2:43 p.m. MT May 7, 2020 | Updated 4:53 p.m. MT May 7, 2020

5 common arguments for reopening the economy -- and why experts say they are flawed

By Holly Yan, CNN

Updated 5:46 PM ET, Mon May 11, 2020
Guidance regarding your business

Contact your professionals

- Attorneys
- Business Advisor or Financial Advisor
- Accountant
- Insurance Agent
- Front Line Professionals
- Local authorities
Cybersecurity: Remote access for work, encryption software and safety measures.

Figure 1. Screenshot of the malicious website “Corona-Virus-Map(dot)com” pretending to be a legitimate COVID-19 tracker.

"WE WATCHED IN HORROR AS OUR ZOOM WORSHIP SERVICE WAS OVERTAKEN THIS PAST WEEK BY SOMEONE WITH INCREDIBLY EVIL INTENT."

- Pastor Lisa Harmon
Woman wins $10,000 for reading fine print on her insurance policy

Josh Hafner USA TODAY
Published 1:31 p.m. ET Mar. 7, 2019 | Updated 8:39 p.m. ET Mar. 7, 2019

Donelan Andrews reads every word of every contract, every time. Squaremouth
Business Advisors or Financial Advisors

Paycheck Protection Program

Economic Injury Disaster Loans

MONTANA WORKS

Workers & Businesses Affected by COVID-19

View the latest information here.

Self-Employed, Independent Contractors and Others can now apply for Pandemic Unemployment Assistance.
Attorneys

- Contracts
- Landlord/Tenant issues
- Unemployment Insurance
- Estate Planning
- Business or Farm Succession Plans
- Discrimination/Retaliation
- Bankruptcy
- Corporate Litigation
- Personal Injury
Ultimately, the choice is yours...

Costs for Compliance

- Masks and PPE
- Sanitation supplies and wipes
- Hand sanitizer
- Thermometer
- Your time and energy

- YOUR TIME and POTENTIAL WAIT FOR DELIVERY OF SUPPLIES
Ultimately, the choice is yours...

Costs of Noncompliance

- Costs of litigation
- Attorneys’ fees
- Expert witness testimony
- Mediation or arbitration
- Your time and energy (+)

- SETTLEMENTS or JUDGMENTS
MANAGING CORONA VIRUS (COVID-19) ANXIETY

For You
- Avoid excessive exposure to media coverage
- Connect through calls/text/internet
- Add extra time for daily stress relief
- Practice self-care
- Focus on your mental health

For Kids
- Reassure them that they’re safe
- Let them talk about their worries
- Share your own coping skills
- Limit their news exposure
- Create a routine & structure

For Quarantine/Isolation
- Keep in contact with your loved ones via social media, texts, and phone calls
- Create a daily self-care routine
- Keep yourself busy: games, books, movies
- Focus on new relaxation techniques
RESOURCES

Federal

- https://covid19relief.sba.gov/
- https://content.govdelivery.com/accounts/MTSOS/bulletins/28ac49f
- https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt
- http://msucommunitydevelopment.org/smallbusiness.html
- http://dl.iMt.gov/employer-covid-19-faq?pk_vid=7195f385b2a838c21589401980b917e8
- https://covid19.mt.gov/LinkClick.aspx?fileticket=gKJsxo0CNWc%3d&portalid=223

State

- https://content.govdelivery.com/accounts/MTSOS/bulletins/28ac49f
- https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt
- http://msucommunitydevelopment.org/smallbusiness.html
- http://dl.iMt.gov/employer-covid-19-faq?pk_vid=7195f385b2a838c21589401980b917e8
- https://covid19.mt.gov/LinkClick.aspx?fileticket=gKJsxo0CNWc%3d&portalid=223

Local

- http://www.cchdmt.org/covid19/
- https://growgreatfallsmontana.org/
CONTACT ME:

Bobbi Berkhof
Church Harris Johnson & Williams, P.C.

rberkhof@chjw.com

(406) 761-3000

The information contained in this presentation does not, and is not intended to, constitute legal advice and is for general information purposes only. The information in this presentation may not constitute the most up-to-date legal or other information and contains links to other third-party websites for the viewers’ convenience. Participants in or viewers of this presentation should contact their attorney to obtain advice with respect to any particular legal matter. No participant or viewer should act, or refrain from acting, on the basis of the information in this presentation without first seeking the legal advice from counsel in their relevant jurisdiction. Only your individual attorney can provide assurances that the information contained herein, as well as your interpretation of that information, is applicable or appropriate in your particular situation. Participation in this webinar or review of this presentation does not create an attorney-client relationship between the presenter and its participants or subsequent viewers.